IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 59 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

VIJAYKUMAR RASIKLAL PATHAK

Appearance:

1. Criminal Revision Application No. 59 of 2003

MR IM PANDYA APP for Petitioner No. 1

MR AR MAJMUDAR for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 07/04/2004

ORAL JUDGEMENT

Heard learned APP for the petitioner Mr I.M. Pandya. The petitioner has challenged the legality and

validity of the order passed by the learned Additional Sessions Judge, Surat, below application exh.161 in Sessions Case No.78 of 2000 dated 6th January, 2003. I have gone through the order passed by the learned Additional Sessions Judge, Surat, and the reasons assigned by him for partly allowing the application exh.161 and in directing the prosecution to offer for inspection all the documents of the earlier investigation made in the crime allegedly committed by the accused persons. Mr Pandya has taken me through the memo of the revision application and especially grounds B, C and D of the memo of the revision application. It is submitted that the application exh.161 does not fall in the compass of Section 91 of the Criminal Procedure Code. The prosecution is not supposed to supply each document or to offer inspection of each document collected by the prosecution during the course of the investigation. At the time of filing of the charge-sheet the investigating agency is supposed to produce the documents which are relevant according to the prosecution and upon which the prosecution intends to rely during the course of trial. If the defence side intends to see a particular document or statement which is relevant from the defence point of view, then, the investigating officer can be asked to bring that document, the day on which his evidence is to be recorded and can be cross-examined in that regard. When the Court was fully satisfied with the documents as prayed for by the accused and the Court is of the opinion that the same are relevant, the prosecution was under obligation to provide copy of the same to the other side and the via media type of order at least ought not to have been passed. It is normally in such situations obligatory on the part of the Presiding Judge of the Court to see that all documents upon which the prosecution intends to rely are given to the accused/defence side well in advance before the date of actual recording the evidence of the prosecution witnesses.

2 I have gone through the application exh.161 and it is possible to infer that in view of the scheme of Section 91 of the Criminal Procedure Code this application can be said to be vague in nature also. The learned Additional Sessions Judge ought to have rejected the said application and has committed an error in allowing the application in part. The prosecution is wrongly placed under obligation to offer for inspection all the documents of earlier stage of investigation when the say of the prosecution at present is that firstly the investigation had proceeded with certain misdirections and misrepresentations made before the agency. It is

relevant to note that report submitted by the agency under Section 169 of Criminal Procedure Code has been supplied to the accused. I have also found that there is some force in the contentions of the petitioner raised in grounds B,C and D of the memo of the application.

3 This revision application is accordingly allowed. The impugned order passed by the learned Additional Sessions Judge, Surat, is quashed and set aside. Rule is made absolute. No costs.

(C.K. Buch, J.)

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